

June 20, 2011

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: **EX PARTE SUBMISSION**

WT Docket No. 03-66; Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands

Dear Ms. Dortch:

The National EBS Association ("NEBSA") and the Catholic Television Network ("CTN") hereby respond to the May 16, 2011 letter from the Telecommunications Subcommittee of the American Petroleum Institute ("API") in the above-referenced proceeding. API continues to seek reallocation of Educational Broadband Service ("EBS") spectrum to the oil and gas industry and other non-educational users in the Gulf of Mexico, and to make the service areas for such commercial EBS licenses extend up to the Gulf shoreline. NEBSA and CTN continue to oppose API's proposal.

NEBSA and CTN are sensitive to the need for communications in the Gulf of Mexico. However, in making its request, API has failed to address several important points.

First, API completely overlooks the fact that EBS spectrum already is licensed overwater in the Gulf of Mexico. As shown on the attached map, which depicts existing Geographic Service Areas ("GSAs") of EBS stations located near the Gulf shoreline, numerous educational entities already hold EBS licenses with GSAs that extend well into the Gulf. Thus, API essentially seeks to take portions of existing service areas from existing licensees, in violation of incumbent licensee rights.

Second, API's proposal raises serious interference concerns. In its May 16 letter, API inexplicably revives its request that the Commission establish the boundaries of a new Gulf of Mexico service area at the shoreline at high mean tide, as opposed to 12 nautical miles from the

shoreline. Due to serious interference concerns of land-based Broadband Radio Service (“BRS”) licensees, in a January 10, 2007 *ex parte*, API conceded that the boundary of the Gulf Service Area for BRS should be 12 nautical miles from the shoreline. A copy of that *ex parte* is attached. API fails to explain why it is advocating for a different service area boundary for EBS – one that would be inconsistent with the BRS Gulf BTA and all other Part 27 services and that would subject land-based licensees to intolerable interference.

If API’s real objective is to obtain access to spectrum near the Gulf shoreline, that can be accomplished through secondary markets leasing transactions, which have proven extremely successful in the 2.5 GHz band. There is a robust secondary market in this band that has facilitated the delivery of educational services, and at the same time, met the needs of commercial and public safety entities. For example, many of the EBS licensees in the Gulf region lease excess capacity to Clearwire Corporation, which has deployed the country’s first 4G mobile broadband network serving more than six million retail and wholesale subscribers. Unlike other situations where public/private partnerships have been proposed but failed to materialize, new services in the 2.5 GHz band are flourishing due to cooperative efforts among educational and commercial entities.

Third, in areas around the Gulf of Mexico where EBS spectrum is unlicensed (i.e., EBS white space), the Commission already has a proceeding underway to license that spectrum.¹ API’s proposal would put the “cart before the horse” by attempting to completely bypass this proceeding, which has been underway for years. Rather than considering special exceptions as proposed by API, the Commission should resolve the EBS white space proceeding promptly so as to permit all remaining EBS geographic licensing gaps to be filled.

Fourth, API has not demonstrated that it actually needs additional spectrum in the Gulf. The Commission just recently licensed 76.5 MHz of BRS spectrum in three BRS Gulf Service Areas.² API fails completely to address why this very recent allocation does not address its member’s needs. Rather than pursuing yet another new spectrum allocation, the Commission should determine whether and why the spectrum already allocated to meet API’s needs is insufficient.

Finally, API misses one of the critical realities of education today – the provision of educational services is not limited by physical location. Learners, including Gulf workers, need

¹ Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking*, WT Docket No. 03-66, 23 FCC Rcd 5992 (2008).

² BRS channels 1 and 2 each comprise 6 MHz. The E and F BRS channel groups, together with their K band spectrum, each comprise 23.5 MHz. The H BRS channel group, together with its K band spectrum, comprises 17.5 MHz.

to be able to access educational opportunities wherever they may be at any given time. It is thus irrelevant whether educational institutions are physically located in the Gulf. Institutions located elsewhere, including land areas adjacent to the Gulf, will be able to use EBS to provide educational services to Gulf workers if and when the need arises.

The Commission should not entertain divisive and complex issues relating to EBS eligibility, interference protection, and service areas at this time. If the Commission determines nonetheless to proceed with licensing EBS spectrum in the Gulf, the existing educational eligibility rules and the very successful secondary market rules applicable to EBS should remain in place. The Commission should also act promptly to resolve the pending EBS white space licensing issues so as to permit all remaining EBS geographic licensing gaps to be filled.

Respectfully submitted,

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